

BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:

GREKA ENERGY
2801-B Santa Maria Way
Santa Maria, CA 93454

Employer

Docket Nos. 03-R4D5-9248
and 9249

**DENIAL OF PETITION
FOR RECONSIDERATION**

The Occupational Safety and Health Appeals Board (Board), acting pursuant to authority vested in it by the California Labor Code hereby denies the petition for reconsideration filed in the above entitled matter by Greka Energy (Employer).

JURISDICTION

From May 5 through June 21, 2002, a representative of the Division of Occupational Safety and Health (the Division) conducted an investigation at a place of employment maintained by Employer at Casmalia Lease, Casmalia, California (the site).

On June 28, 2002, the Division issued citations to Employer alleging general violations of section 5144(c)(1) [written respiratory protection program]; section 5144(e)(1) [medical evaluation to use respirator]; section 5144(f)(1) [respiratory equipment fit test]; section 5144(h)(2)(A)(2) [maintenance and inspection of respirators]; section 6512 [emergency communication and plan of action]; section 6531 [gas and vapor testing; and a serious violation of section 5144(d)(2)(A) [respiratory protection] of the occupational safety and health standards and orders found in Title 8, California Code of Regulations.¹ The Division proposed civil penalties totaling \$7,425 for the alleged violations.

On February 26, 2003, Employer filed an appeal with the Board.

On September 9, 2003, the Board issued an "Order Denying Late Appeal" on the ground that good cause did not exist for filing the appeal 212 days after the deadline to appeal.

¹ Unless otherwise specified all references are to sections of Title 8, California Code of Regulations.

On October 14, 2003, Employer filed a petition for reconsideration with the Board. The Division filed an answer on November 18, 2003.

ISSUE

Has Employer established good cause for filing a late appeal?

REASONS FOR DENIAL OF PETITION FOR RECONSIDERATION

Employer petitions for reconsideration alleging in relevant part that:

During the time frame for Greka Energy to file a timely appeal (the due date to file an appeal was July 25, 2002), an internal reorganization took place and was effective on 7/17/02. This reorganization resulted in our Environmental & Safety Manager (with the Safety Supervisor reporting to him) becoming Land & Environmental Manager -- and Safety moved into the Regulatory Department. The Manager of the Regulatory Department was apparently not made aware of the impending filing date. The Safety Supervisor, at the time, was responsible for tracking the citations and corresponding with the Division, but apparently failed to file a timely appeal on behalf of Greka Energy. Shortly thereafter (7 working days), on 8-7-02, the Safety Supervisor left the company for personal reasons. It was not discovered that the appeal had not been filed until new staff members began working for Greka Energy.

This case is a typical case of an employer's internal operating procedures being to blame for not prosecuting the appeal timely. As we have noted several times in the past, *Kaweah Construction Company*, Cal/OSHA App. 87-9005, Denial of Petition for Reconsideration (Mar. 5, 1987) is the Board's seminal case on good cause when the proffered excuse is that an internal operating procedure caused the late filed appeal. In *Kaweah Construction Company*, the employer asserted it did not file a timely notice of appeal because its field engineer did not tell any supervisor that citations were received and the notice of civil penalty got "lost in the paper shuffle before reaching the President's desk." (*Kaweah, supra*, p. 2.) The Board determined that when a document is lost in the paper shuffle in an office, and an untimely notice of appeal results, no good cause exists to justify an extension. (*Ibid.*)

Since *Kaweah*, the Board has consistently held that when a notice of appeal is untimely filed because of internal operating procedures good cause does not exist. (See, *Laselco Pacific*, Cal/OSHA App. 96-9084, Denial of Petition for Reconsideration (July 16, 1996) [citations directed to president of company who was on extended business trip]; *Del Monte Glass, Inc.*, Cal/OSHA App. 87-9009, Denial of Petition for Reconsideration (May 7, 1987); *Cleveland*

Wrecking Company, Cal/OSHA App. 92-9054, Denial of Petition for Reconsideration (Nov. 18, 1992) [branch manager did not properly handle citation]; and *Jesse Aguirre, Farm Labor Contractor*, Cal/OSHA App. 93-9013, Denial of Petition for Reconsideration (June 10, 1993) [appeal misplaced during move of its office].) The Board held in *Jesse Aguirre, Farm Labor Contractor*, *supra*, at p. 2, that “[i]t is the appellant’s obligation to put procedures into place that will ensure that important documents it receives are processed in a timely manner.”

Like the cases cited above, this case presents an example of a failure of an employer’s internal operating procedures. Under the facts presented in this case, the Board believes that it is properly exercising the discretion vested in it by insisting on timely appeals and finds that Employer has not established good cause for filing an untimely appeal.

Further, Employer's desire and efforts to speak with the enforcement agency, the Division, about the citations did not excuse it from filing a timely appeal with the Appeals Board. By statute (Labor Code sections 6302, 148 et seq. and 6307) and in practice, the Division and the Appeals Board are separate agencies with distinct and separate responsibilities under the law. The Board finds that Employer's choice to wait for a response from the Division before filing an appeal fails to show good cause to extend the 15-day filing period required under Labor Code section 6600. The 15-day rule is plainly stated on each citation. As the Board has previously held, the statement on the citation provides adequate notice of the appeal period. (*Brick "N" Wire*, Cal/OSHA App. NDN, Denial of Petition for Reconsideration (Feb. 10, 1981).) Further, Employer's belief that it should not have been cited for the serious violation has no bearing on the issue of whether good cause has been established for the late appeal. *Township Building Services, Inc.* Cal/OSHA App. 95-9212 Denial of Petition for Reconsideration (March 18, 1996).

DECISION

The Board affirms its Order dated September 9, 2003, denying Employer’s late appeal.

MARCY V. SAUNDERS, Member
GERALD PAYTON O’HARA, Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
FILED ON: December 3, 2003